



**STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR**

CHRISTOPHER T. SUNUNU
Governor

October 16, 2019

The Honorable Caroline McCarley
Mayor
City of Rochester
City Hall
31 Wakefield Street
Rochester, NH 03867

The Honorable Karen Weston
Mayor
City of Dover
City Hall
288 Central Avenue
Dover, NH 03820

Dear Mayors McCarley and Weston,

I am writing in response to your previous communications and my meeting with representatives of your cities. My administration is committed to solving the long outstanding issue of National Pollutant Discharge Elimination System (NPDES) permits for communities discharging into the Great Bay Estuary (GBE). The Great Bay is an important ecosystem for our state, and the communities along its shore are the beating heart of our economy. I have long stated that regulations should be regular, and have repeatedly pushed the Environmental Protection Agency (EPA) to issue permits that provide certainty for our business, flexibility for our municipalities, and protection for our environment. As an environmental engineer and a businessman, I know definitively that environmental protection and economic expansion are not mutually exclusive.

Since I took office, my team and I have met with representatives of the cities of Rochester, Dover, and Portsmouth; the Department of Environmental Services (DES); the EPA; and environmental advocates more than 20 times. We have listened to the municipalities concerns and worked with the EPA to think innovatively and embrace the adaptive management approach sought by the municipalities.

My administration has worked hard in a collaborative fashion to develop an innovative permit that is unlike any the EPA has put out before. It allows municipalities the flexibility to target their reductions where they make the most sense, from either point or non-point sources. It uses a prior year as the baseline to recognize the investments and upgrades municipalities have made. It provides a 20-year time horizon for reductions and a potential exit ramp every five years to halt and hold the permitting regime should restoration be achieved.

This integrated permit specifically addresses municipalities needs in the following ways:

You requested an adaptive management approach versus an expensive "limits of technology" approach. **The proposed general permit is an adaptive management approach.**

You requested that the permit be an integrated approach so that investments in Non-Point Sources (NPS) could offset point source requirements. **The proposed general permit is an integrated approach.**

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You requested that the permit provide sufficient time for implementation so that no community would be in immediate noncompliance. **The EPA has agreed to provide a multi-year implementation so that no community will be in initial noncompliance. Furthermore, the EPA is open to additional discussion of those schedules.**

You requested a draft-monitoring plan for review and for the EPA to allow changes to that plan to include “non-nitrogen focused” measurements to help identify other potential issues. **EPA provided the draft plan on December 14th of last year. The coalition responded that you would hire a scientist to provide specific suggested improvements. To date that has not happened.**

You requested that a municipality’s recent work be acknowledged and credited within the permit. **We were able to convince the EPA to set a 2016 baseline so that the work municipalities have undertaken over the last three years would stand as a “credit” towards their total nitrogen (TN) limits. The EPA remains open to further discussions with towns regarding the baseline.**

You requested an alternative scientifically-based goal after the EPA briefed their initial design for the general permit, and you stated that that the non-point source reductions would be too difficult to attain and should not be written into the permit. **EPA agreed to review an alternative scientifically-based goal, in November 2018, and the EPA is now proposing to make the non-point source portion of the permit voluntary.**

In your September 30, 2019 letter to me, you further request that the state rescind its support for the TN load limit used by the EPA in favor of a TN concentration based approach. You request that we use a hydrodynamic model to reach a TN concentration limit. **The state is open to using a TN concentration approach and using a hydrodynamic model to derive that limit.** We are committed to working collaboratively with municipalities to calibrate the model to a scientifically defensible endpoint and then working with the EPA to reach mutual acceptance of that approach. A peer review could absolutely be part of this collaborative process.

In your October 7, 2019 letter to me, you request that the state support using a Hydrodynamic model to develop a numeric criterion, taking into account seasonality and geographic diversity within the GBE. **The State fully supports giving consideration to the growing season for developing a numeric criteria.** DES is eager to work with municipalities and the EPA in a collaborative fashion to develop the protocols for considering seasonality in the development of the numeric criteria. The letter from Dr. Howes that you provided stresses the need to collect comprehensive data in order to calibrate the Hydrodynamic model. I included funding within my budget, for new datasondes to collect this data. After the House removed this funding, I worked with the Senate to have it re-included. That funding is now available, and we are working to deploy the new resources.

You cite the high costs of implementing the permit as reasons to re-evaluate the underlying models used. I am told that the figures you cite as the cost of the permit are inconsistent with the cost estimates developed by both the state and the EPA. I know that the EPA and DES have reviewed these estimates with you, and remain willing to meet again to communicate how municipalities can implement these permits in a cost-effective manner. Furthermore, one of the benefits of an adaptive management approach is that at each

permit renewal stage there is the opportunity to review the recovery data and consider the cost per unit of reductions, to ensure a balanced cost for the level of TN reductions.

Unfortunately, time has run out for additional changes to the underlying model for this round of NPDES general permits. Tremendous work has been done to reach this end-point, and economic development throughout the GBE requires the certainty, and affordability, that the permit provides. This permit provides flexibility to municipalities and does not mandate the limits of technology or immediate TN reductions. The general permit has a twenty-year time horizon to reach restoration of the GBE and allows for changes every five years accounting for the most recent data and innovative scientific approach. Again, the state is committed to working on a hydrodynamic model, and developing protocols to account for seasonality in collaboration with municipalities and the EPA. These efforts will be informed by the additional data that will be collected from the new datasondes. The product of these efforts will be incorporated into the next phase of this NPDES permit.

My administration has and will continue to ensure that this process takes a collaborative approach that incorporates stakeholder input at every turn. While, I cannot support a further delay to this NPDES permit, which would cause economic uncertainty in the region, I remain committed to working with municipalities to use the best available information to make informed changes thought out the 20-year span of this adaptive NPDES permit.

Sincerely,



Christopher T. Sununu
Governor

CC Commissioner Robert Scott, New Hampshire Department of Environmental Services
 Administrator Dennis Deziel, United States Environmental Protection Agency, Region I